

RENDERED: MAY 2, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2002-CA-000383-MR

DEMETRES HAYES

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY PAYNE, JUDGE  
ACTION NO. 01-CR-00906-002

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: DYCHE AND McANULTY, JUDGES; AND POTTER, SPECIAL JUDGE.<sup>1</sup>

POTTER, SPECIAL JUDGE. Demetres D. Hayes appeals from a conditional guilty plea alleging that the trial court erred by denying his motion to suppress statements given to police during questioning. Hayes contends that though he had been advised of his Miranda rights earlier in the evening, when he was

questioned a second time by police, he should have been advised of his Miranda rights a second time. Having reviewed the arguments of the parties and the record, we affirm.

On August 28, 2001, Demetres D. Hayes was indicted for first-degree trafficking in a controlled substance (KRS 218.1412); possession of drug paraphernalia (KRS 218A.500); possession of marijuana (KRS 218A.1422); and first-degree persistent felony offender (KRS 532.080). His codefendant, Denia Antonette Gateskill, was indicted of various drug-related offenses in the same indictment. The charges resulted from the execution of a search warrant at Gateskill's Lexington residence on July 10, 2001.

On October 23, 2001, Hayes filed a motion to suppress any statements he made to police in conjunction with the execution of the search warrant and his arrest. A second motion to suppress filed the same day sought to suppress all evidence seized at or about the time of his arrest.

In the meantime, Hayes's codefendant, Gateskill, made similar motions to suppress. On October 24, 2001, the trial court held a suppression hearing on the motions in the two cases. The Commonwealth called only one witness to testify,

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<sup>1</sup> Senior Status Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Detective Jack Dawson of the Lexington Police Department's Narcotics Unit. Following is a summary of his suppression hearing testimony.

On July 4, 2001, Dawson received information from an unknown caller claiming that he had recently bought property across from 666 Headly Avenue and that there was a great deal of foot traffic leading in and out of that address. Dawson and other members of the Narcotics Unit did drive-by surveillance of the location over the next few days. On July 10, 2001, Dawson and Detective Byron Smoot surveilled the address for about forty minutes between 8:30 and 9:30 p.m.

Shortly before obtaining the search warrant, Dawson had sent a qualified confidential informant into 666 Headly Avenue to attempt to purchase drugs. The informant subsequently returned with a quantity of drugs and stated that he had purchased the drugs at the Headly Avenue address from a bald, black man in his forties who answered to "Demetrius." Dawson obtained the search warrant at 11:11 p.m. on July 10, and the search warrant was executed at 11:49. The warrant permitted a search of 666 Headly Avenue and "Demetrius (LNU)."

Dawson and other members of the narcotics unit approached the home on foot and, as they were arriving, they observed Gateskill leaving the home. Based upon information received from his confidential informant, Dawson knew that the

house was Gateskill's residence, and he therefore decided to stop and detain her.

At about the same time, Hayes exited the residence, and was likewise detained. Gateskill and Hayes were then returned to the residence where Dawson read them the contents of the search warrant and informed them of their Miranda rights. Dawson recited the Miranda warnings by memory as follows: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney, and if you can not afford one, the courts will appoint one for you." See Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). After reciting the Miranda warnings, Dawson asked Hayes and Gateskill if they understood those rights and they nodded affirmatively.

Within the house, the detectives found cocaine, marijuana, and various drug paraphernalia. No contraband was located on either Gateskill or Hayes. After approximately forty-five minutes at the house, the officers took Gateskill and Hayes to the police station to interview them. Dawson interviewed Gateskill first, and then Hayes. During the interviews, Dawson did not reiterate their Miranda rights to either defendant, but simply asked if they remembered him telling them their rights at the scene and asked if they understood those rights.

On October 26, 2001, the trial court entered an order denying both Hayes and his codefendant's motions to suppress. Hayes subsequently entered a conditional guilty plea under which he pled guilty to the charges as listed in the indictment, except that the trafficking charge was amended to possession of a controlled substance. Under the agreement, Hayes received an enhanced sentence of ten years, but reserved the right to appeal the trial court's suppression ruling.

Hayes contends that any statements made by him following his custodial interrogation at the police station following his arrest should be suppressed on the basis that Detective Dawson failed to reinform him of his Miranda rights prior to questioning him. We disagree.

The warnings required under Miranda are concerned with "the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation." Fields v. Commonwealth, Ky. 12 S.W.3d 275, 283 (2000)(citing Miranda v. Arizona, 384 U.S. 436, 477, 86 S.Ct. 1602, 1629, 16 L.Ed.2d 694 (1966)). However, Miranda does not require that the warnings be repeated each time the interrogation process is resumed after an interruption. Id. (citing United States v. Delay, 500 F.2d 1360, 1365 (8th Cir.1974); Evans v. Swenson, 455 F.2d 291, 296-97 (8th Cir.1972), cert. denied, 408 U.S. 929, 92 S.Ct. 2508, 33 L.Ed.2d

342 (1972); Miller v. United States, 396 F.2d 492, 496 (8th Cir.1968), cert. denied, 393 U.S. 1031, 89 S.Ct. 643, 21 L.Ed.2d 574 (1969)). "In each case, the ultimate question is: Did the defendant, with a full knowledge of his legal rights, knowingly and intentionally relinquish them?" Id. (citing Miller v. United States, supra, at 496).

The uncontradicted testimony at the suppression hearing was that when Detective Dawson first took Hayes into custody he informed them of his Miranda rights. After police transported Hayes to the police station, Dawson undertook to question Hayes again. On this occasion, Dawson began the questioning by asking Hayes if he recalled being given his Miranda rights earlier in the evening and if he understood them. In response, Hayes indicated that he remembered being advised of his Miranda rights and that he understood them.

In consideration that Hayes had been given his Miranda warnings only a short time earlier, at which time he acknowledged he understood them, and explicitly indicated prior to the police station questioning that he remembered being given the warnings and again acknowledged that he understood them, we are persuaded that there was no constitutional violation of the right to counsel provision of Miranda, and that the trial court did not err in denying Hayes's motion to suppress the statements made during his police station questioning.

For the foregoing reasons the judgment of the Fayette  
Circuit Court is affirmed.

ALL CONCUR.

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ORAL ARGUMENT FOR APPELLEE

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